

State of Wisconsin \ Government Accountability Board

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MEMORANDUM

DATE: July 26, 2012

TO: Interested Parties

FROM: Nathaniel E. Robinson
Elections Division Administrator
Government Accountability Board

SUBJECT: Voting Residence of University and College Students

The Government Accountability Board has received a number of inquiries from students, municipal clerks, and university and college representatives regarding the proper location for college students to cast votes, particularly regarding elections that occur in the summer months, such as the August Partisan Primary. This document provides guidance regarding the application of Wisconsin's residency laws, in general and specifically as they apply to college students.

General Rules and Principles for Determining Residency

The determination of voting residency often depends on specific facts, especially for transient persons such as students, but the Statutes spell out several general principles and rules to guide that determination:

1. Every U.S. citizen age 18 or older who has resided in an election district or ward for 28 consecutive days before any election where the citizen offers to vote is an eligible elector. *Wis. Stat. §6.02(1).*
2. Any eligible elector who moves within Wisconsin later than 28 days before an election shall vote at his or her previous ward until meeting the 28-day requirement at the new location. *Wis. Stat. §§6.02(2), 6.10(3).*
3. The residence of a person is the place where their habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return. *Wis. Stat. §6.10(1).*
4. The residence of an unmarried person in a transient vocation, a teacher or a student who boards at different places for part of the week, month, or year, if one of the places is the residence of the person's parents, is the parents' residence unless through registration or some similar act the person elects to establish a residence elsewhere. *Wis. Stat. §6.10(4).*
5. A person shall not lose residence when they leave home and go to another location for temporary purposes with the intent to return home, and no person gains residency in any ward while there for temporary purposes only. *Wis. Stat. §6.10(5),(8).*

6. If a person moves to another state with the intent to make a permanent residence there, or, votes as a citizen of that state, the person loses Wisconsin residence for voting purposes. *Wis. Stat. §6.10(10)*.
7. Neither an intent to acquire a new residence without removal, nor a removal without intent, shall affect residence. *Wis. Stat. §6.10(11)*.
8. Student status shall not be a consideration in determining residence for the purpose of establishing voter eligibility. *Wis. Stat. §6.10(12)*.

Considering these statutory provisions together, several points can be made regarding voter residency in general. While recent legislation changed the residency requirement from 10 days to 28 consecutive days, the rules did not change with regard to a temporary absence (regardless of the length) not affecting voting residence. In addition, once a physical presence is established with the required intent, the 28 consecutive days requirement does not mean that a voter must sleep at or remain at that location for 28 consecutive days before being eligible to vote there. For instance, a voter may move to a location on a weekend 30 days before an election with the intent to make it their voting residence, spend time travelling or at the previous residence on a temporary basis for part or all of the next 28 days, and still vote from the new location. In that case the voter has established a physical presence at the new ward with the requisite intent, and the residency is not lost when they are away from home for temporary purposes only.

In addition, it is important to keep in mind that the purpose of the identifying document used by voters registering during late registration or on election day for proof of residency pursuant to Wis. Stat. §6.34 is to establish the location of the residence, not the duration. The proof of residency document does not need to be dated more than 28 days prior to the date of the election. Except for a residential lease, the proof of residency document is only a snapshot in time and does not (and is not required to) establish that the elector resided at the location for 28 consecutive days. The only proof of residency documents with date restrictions are a lease, which must be effective for a period that includes election day; a property tax bill, which must be for the current or preceding year; and a utility bill, which must be for a period commencing within 90 days before the date the voter registers. *Wis. Stats. §6.34(3)(a)4, 8*.

Voter Intent

The concept of a voter's intent is an essential element interwoven into the qualifications for residency. Determining what is in a voter's mind can be a challenging and elusive task, which was addressed in an Attorney General opinion issued in 1971. *60 Atty. Gen. 214*. While Wisconsin's election laws have undergone some significant changes since 1971, the following general principles outlined in the opinion remain and are useful reminders when evaluating residency questions:

1. "The Wisconsin Statutes regulating absentee voting are to be liberally construed in aid of the right of suffrage, and one should look to the whole and every part of the election laws, the intent of the entire plan, the reasons and spirit for their adoption, and try to give effect to every portion thereof. However, the legislature may determine that fraud and violation of the sanctity of the ballot can much more readily be perpetrated by use of an absentee ballot than under the safeguards provided at a regular polling place." *60 Atty. Gen. 217*.

2. When a person has established a residence, it is generally held that such residence is presumed to continue until a new one is established, and the law of this State places the burden on the person who asserts the nonresidence of a voter to prove such assertion. *60 Atty. Gen. 219.*
3. “As a practical matter, it must be accepted at the outset that there is no absolute criterion or guideline which will at once determine the question of residence in every case.” *60 Atty. Gen. 219.*
4. A voter’s statements and actions can establish intent. “The intention to be considered is that which is manifested by the voter’s acts. If there exists a discrepancy between declarations of intent and acts, the declarations yield to the conclusion to be drawn from the acts.” *60 Atty. Gen. 220.*
5. It is not necessary that there be an intention to remain permanently at the voting residence. It is sufficient that the place is for the time being the home of the voter to the exclusion of other places. *60 Atty. Gen. 221.*

Voting Residency of College Students

In applying the residency rules to university and college students, it is important to keep in mind the language in Wis. Stat. §6.10(4) cited above. The residence of a student who boards at different places for part of the week, month, or year, if one of the places is the residence of the person’s parents, is the parents’ residence unless through registration or some similar act the person elects to establish a residence elsewhere. Throughout a college career, a student may continue to vote at their parents’ residence even when residing at the school until the student registers to vote at a campus address.

Once a student registers at a specific campus address, the student must vote at that address until reestablishing residency elsewhere, either at home or another campus address. Residency for voting purposes may be reestablished at home during the school year if the student maintains a physical presence there (e.g., stays at home during a school break or weekend) and has the intent to make the home address the permanent residence for voting purposes, even if the student returns to campus until the date of an election. Residency can be established with the required intent, and is not lost due to a temporary absence such as attending school.

If a student moves from one campus address to another, the voting residence depends upon whether the student registers at the new campus address. If so, the student must vote at the new campus address until reestablishing residency at their parents’ home or elsewhere. However, if a student lives at a new campus address for over 28 days and is therefore no longer eligible to vote from the prior campus address, the student again has the option to vote from either the new campus address or their home address.

Because voter intent is part of determining residency each case must be evaluated on an individual basis, in light of whatever intent is evidenced by the voter’s sworn statement on the voter registration form. The following questions and responses attempt to summarize and apply the voter residency rules to situations involving university and college students. In this document, “campus address” refers to the student’s residence at the university or college, regardless of whether it is university-sponsored housing or located “off campus.”

1. What are the requirements for voting residency in Wisconsin?

Under Wisconsin Statutes, an individual must reside in an election ward for at least 28 consecutive days and have no present intent to move. A person does not lose residency for voting purposes by leaving an established residence for temporary purposes with intent to return to the residence. Student status is not a consideration in determining residence for the purpose of establishing voter residency.

2. If I am living at my campus address during the summer, where may I vote?

A student who has registered to vote at a campus address and continues to live there during the summer must vote from that location. A student who has registered to vote at a home address and lives on campus during the summer may vote from the home address or may register and vote from the campus address.

3. If I have resided at my campus address for 28 consecutive days, will live at my parents' home or elsewhere during the summer, and intend to return to a campus address in the fall, where may I vote?

Once a student has established residency at a campus address, the student may register to vote and may vote using the student's campus address until the student establishes a new voting residence. This is the case even if the student is temporarily away from campus and does not know their campus address for the following school year. If the student has previously registered to vote at the campus address, the student may not register to vote at a home or different address until re-establishing residency for 28 consecutive days prior to the election.

Alternatively, a student may register to vote from a home address if the student has not yet registered to vote from a campus address. In that case the student's home address is considered the permanent address for voting purposes and the student is only temporarily away from that address during the school year.

4. If I have graduated or have left school, am moving from my campus address and do not intend to return in the fall, where may I vote?

An individual who is registered to vote at a Wisconsin campus or home address, leaves that address permanently, and moves to another Wisconsin residence may continue to vote using the prior address until establishing residency for 28 consecutive days at the new location.

An individual who leaves their Wisconsin campus or home address and moves to an out-of-State residence, and who has no intent to return to the ward in which the prior address is located, may not vote in an election from the prior address.

5. If I registered to vote at my school address and move to another address where I do not register to vote, can I vote from my parents' residence?

When a student has moved from one campus address so they can no longer vote at that address, they regain the option to vote at their parents' address. The Wisconsin Statutes recognize that students may continue to use their parents' residence as a voting residence

unless they terminate that option by registration or some similar act. For an individual who is no longer lawfully registered at one campus address, their election to establish a voting residence separate from their parents' residence under Wis. Stat. §6.10(4), has essentially expired. For example, a student may have voted in 2008, moved several times since then, and has not registered to vote at a new campus location since 2008. In that case the student may vote from their home address or register to vote at the new campus address.

6. May a student establish residency at home and vote from that location after previously having voted on campus?

A student could have re-established residency at the home address during summer break, another school break, or even a weekend, if the student had the requisite intent to establish that residency as their voting address. If the student intends to make the home address their residency for voting purposes, and begins to establish or re-establish a physical presence there at least 28 days before the election, the student is permitted to vote at the home address.

7. Does the 28 consecutive day residency requirement to vote from an address have to immediately precede the election?

The statutory mandate to establish residency for 28 consecutive days does not necessarily mean that a voter has to be at the location every day during 28 consecutive days. Under Wis. Stat. §6.10(5), a person does not lose residence by leaving home and going somewhere else for temporary purposes.

For example, an individual may start to establish a new residency for voting purposes on the day they begin moving to a new house and the 28 days continue to accrue even if the individual continues to temporarily reside in the previous location for a month. Similarly, an individual may start to establish a new residency when they move into a new location and are there for a short period of time before having to leave for work or some other temporary purpose. A truck driver who is only home on the weekend continues to accrue days for the 28-day requirement throughout an entire month even though the individual may not be physically present at the home more than 2 consecutive days.

8. What if I voted from my home address in the June 5, 2012 recall election and want to vote from my school residence for the August 14, 2012 partisan primary?

If the student intends to make the campus address their residency for voting purposes, and begins to establish or re-establish a physical presence there at least 28 days before the election, the student is permitted to vote at the campus address.

The following scenario is possible: A student voted at home at the June 5th recall election. During the summer, the student stays at the campus address and re-establishes residency there with the intent to make it their permanent residence for voting in the August 14th partisan primary. As long as the student has re-established a physical presence for at least 28 days before the August 14th election, the student is permitted to vote at their campus address.

9. How and when may I obtain an absentee ballot for an election?

Municipal clerks must make ballots available to absentee voters, at least 21 days before a primary or election and 47 days before the presidential preference primary, partisan primary, and general election. Absentee ballots may be obtained by submitting a request to the municipal clerk (or the Election Commission in the City of Milwaukee) by mail, fax, email, or in person. Clerks may email or fax ballots only to military electors (and overseas voters for federal elections).

Most requests for an absentee ballot to be mailed to the voter must be submitted to the municipal clerk (or Election Commission) by 5:00 p.m. the Thursday before the election. Indefinitely confined voters and military voters must submit requests by 5:00 p.m. the Friday before the election. Sequestered jurors and hospitalized electors must submit absentee ballot requests by 5:00 p.m. on the day of the election. For federal elections, absentee ballot requests for military voters must be submitted by 5:00 p.m. on the day of the election. Completed absentee ballots returned by mail must be postmarked by Election Day and must be received by 4:00 p.m. on the Friday after the election. Absentee ballots delivered in person must be returned by 8:00 p.m. on Election Day.

In-person absentee voting begins the 3rd Monday before an election and continues until 5:00 p.m. or the close of business, whichever is later, the Friday before an election.

Individuals with questions regarding the information contained in this document may contact Michael Haas at (608) 266-0136 or Michael.Haas@wisconsin.gov or Meagan Wolfe at (608) 266-8175 or Meagan.Wolfe@wisconsin.gov. Media inquiries should be directed to Reid Magney at 608-267-7887 or Reid.Magney@wisconsin.gov.